

Polygraphs
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98TH CONGRESS
2D SESSION

H. R. 4681

Relating to the administration of polygraph examinations and prepublication review requirements by Federal agencies.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 30, 1984

Mr. BROOKS introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

Relating to the administration of polygraph examinations and prepublication review requirements by Federal agencies.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

4 SECTION 1. This Act may be cited as the "Federal
5 Polygraph Limitation and Anti-Censorship Act of 1984".

6 FINDINGS

7 SEC. 2. (a) The Congress hereby finds that—

8 (1) there is no scientific evidence to demonstrate
9 the validity of polygraph testing for any screening pur-
10 pose;

1 (2) use of the polygraph for screening purposes
2 runs a great risk of incorrectly labeling large numbers
3 of persons: many innocent people will be incorrectly
4 branded as liars, and many who are lying will be identified as truthful;
5

6 (3) coercing submission to polygraph testing
7 through the threat of penalties will create an even
8 greater risk of misidentification; and

9 (4) polygraph testing for screening purposes and
10 its involuntary use for any purpose is therefore an un-
11 sound policy which should not be followed and for
12 which Federal funds should not be expended.

13 (b) The Congress further finds that—

14 (1) prepublication review requirements by the
15 Federal Government of its employees and former em-
16 ployees constitute a Government censorship program;

17 (2) this censorship program has great potential for
18 the restriction of the free flow of nonclassified informa-
19 tion and is therefore an unwarranted infringement of
20 open debate on matters of national importance;

21 (3) this censorship program entails strong disin-
22 centives to Government service for qualified citizens;
23 and

1 (4) this censorship program is readily subject to
2 intentional manipulation and abuse for partisan political
3 purposes.

4 RESTRICTION OF AUTHORITY TO ADMINISTER

5 POLYGRAPH EXAMINATIONS

6 SEC. 3. (a) Except as provided in section 6, no agency
7 may—

8 (1) require or threaten to require any employee to
9 submit to any polygraph examination;

10 (2) request any employee to submit voluntarily to
11 any polygraph examination unless such request is per-
12 mitted by subsection (b); or

13 (3) impose or threaten to impose any sanction
14 with respect to any employee—

15 (A) on the basis of the employee's refusal to
16 submit to any examination; or

17 (B) on the basis of any inference or determi-
18 nation made from the employee's performance in
19 the course of a polygraph examination.

20 (b) An agency may request an employee to submit vol-
21 untarily to a polygraph examination if the examination is ad-
22 ministered as part of a specific investigation into alleged
23 criminal conduct or an unauthorized disclosure of classified
24 information—

1 (1) after completion, by other means, of as thor-
2 ough an investigation as circumstances reasonably
3 permit;

4 (2) for the development of additional information
5 that is essential to that investigation; and

6 (3) to an individual reasonably believed to have
7 knowledge of, to be involved in, or to be withholding
8 information concerning, the matter under investigation.

9 (c) For the purpose of subsection (b), the term "classi-
10 fied information" means information (1) specifically author-
11 ized under criteria established by an Executive order to be
12 kept secret in the interest of national defense or foreign
13 policy, and (2) in fact properly classified pursuant to such
14 Executive order.

15 PROHIBITION AGAINST REQUIRING AND ENFORCING

16 PREPUBLICATION REVIEW REQUIREMENTS

17 SEC. 4. (a) Except as provided in section 6, no agency
18 may—

19 (1) impose or threaten to impose upon any em-
20 ployee any prepublication review requirement;

21 (2) impose or threaten to impose any sanction
22 with respect to any employee—

23 (A) on the basis of the employee's refusal to
24 enter into a prepublication review agreement; or

1 (B) on the basis of the employee's failure to
2 comply with any prepublication review require-
3 ment; or

4 (3) otherwise enforce or threaten to enforce such
5 an agreement or requirement.

6 (b) The head of each executive agency to which this Act
7 is applicable shall rescind all prepublication review agree-
8 ments in effect on the date of enactment of this Act and
9 provide written notice of such rescission to each affected em-
10 ployee.

11 EMPLOYEE'S REMEDIES

12 SEC. 5. (a) Any person aggrieved by a violation of this
13 Act may institute an action for injunctive or monetary relief,
14 or both, in the United States District Court for the District of
15 Columbia or for the district in which that person resides or in
16 which that person was employed at the time the cause of
17 action arose. Such person may also petition the court for ap-
18 propriate temporary relief (including a restraining order), and
19 the court shall grant such relief unless there is no probable
20 cause to believe that a violation has occurred or will occur.

21 (b) An action for monetary relief may include relief for
22 damages to reputation and privacy.

23 (c) The court shall award to a prevailing plaintiff in an
24 action brought under this section costs of litigation and rea-
25 sonable attorney's fees.

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1 (d) The remedies provided by this section are in addition
2 to, and not in lieu of, any other remedy available to any
3 employee by law.

4 EXEMPTIONS

5 SEC. 6. This Act shall not apply with respect to em-
6 ployees of the Central Intelligence Agency or the National
7 Security Agency.

8 CONSTRUCTION

9 SEC. 7. Nothing in this Act shall be construed to au-
10 thorize the administration of, or to constitute congressional
11 affirmation of or acquiescence in any assertion of authority to
12 administer, any polygraph examination or prepublication
13 review requirement.

14 DEFINITIONS

15 SEC. 8. For purposes of this Act—

16 (1) the term "sanction" means any action which
17 results in dismissal, demotion, nonselection for employ-
18 ment or assignment, denial or revocation of clearance,
19 suspension, reassignment, reprimand, transfer, or any
20 other unfavorable consequence related to the status of
21 an employee or to appointment to employment;

22 (2) the term "employee" means (A) an employee
23 as defined in section 2105(a) of title 5, United States
24 Code, (B) an individual who was formerly such an em-

1 ployee, or (C) any applicant for appointment as such an
2 employee;

3 (3) the term "agency" has the meaning given in
4 section 552(e) of title 5, United States Code;

5 (4) the term "polygraph examination" means an
6 interview with an individual which is conducted in
7 whole or in part for the purpose of enabling the exam-
8 iner to infer or otherwise make a determination con-
9 cerning, by evaluation of measured and recorded phys-
10 iological responses, whether the individual has truthful-
11 ly or deceptively responded to inquiries made in such
12 interview;

13 (5) the term "prepublication review" means sub-
14 mission of information to an agency for the purpose of
15 permitting such agency to examine, alter, excise, or
16 otherwise edit or censor such information before it is
17 publicly disclosed, but does not include any such sub-
18 mission with respect to information which is to be dis-
19 closed by an employee in his or her official capacity;

20 (6) the term "prepublication review agreement"
21 means any agreement or any portion of any agreement
22 between an agency and any employee which requires
23 prepublication review; and

24 (7) the term "prepublication review requirement"
25 means any action by an agency which requires an em-

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1 ployee to submit to prepublication review, and includes
2 a prepublication review agreement.

3 EFFECTIVE DATE

4 SEC. 9. This Act shall apply on and after April 15,
5 1984.

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